IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1168 of 2007

Anthony .. Petitioner

Vs.

1. The Secretary to Government
of Tamil Nadu
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The Commissioner of Police
Chennai Police. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus to issue a writ, order or direction in the nature of a WRIT OF HABEAS CORPUS, or any other appropriate writ, calling for the records of the detention order made in dated 3.7.2007 in Memo No.283/B.D.F.G.I.S.S.V./2007 passed by the commissioner of police, chennnai police, the second respondent herein and set aside the same and direct the respondent to produce the detenue Anthony son of Moses, now confined in central prison, puzhal, chennai, before this Hon'ble Court and set the detenu Thiru. ANTHONY at liberty

For Petitioner : Mr.R.Balakrishnan

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

Challenging the order of detention dated 3.7.2007 made in 208/2007, passed by the second respondent branding the petitioner as a 'Goonda'

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under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), the petitioner, who is now confined in Central Prison, Chennai, has filed this Habeas Corpus Petition to set aside the order of detention and directing the respondents to produce him before this Court and set him at liberty.

2. The ground case based on which the impugned order of detention has been passed is that on 24.6.2007 at about 1700 hours, when one Velu was returning to his home in his cycle, the detenu restrained and threatened him at the point of knife, took away Rs.330/- and a gold ring from his finger. When the complainant shouted for rescue, the public tried to catch the detenu, but the detenu pelted stones on them. However, the police personnel with the help of the public apprehended him and a case in Crime No.451 of 2007 was registered for offences punishable under Sections 341, 323, 336, 392 and 506(2) I.P.C. and the detenu was sent for judicial remand.

3. Taking into consideration the above said ground case as well as seven adverse cases, which are for the offences punishable under Sections 336, 341, 324, 380, 392, 399, 457 and 506(2) IPC, the second respondent/detaining authority having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The main contention of the learned counsel for the petitioner is that even though it is stated in the first information report as well as the arrest memo relied upon by the detaining authority that the detenu was arrested on 24.6.2007, the detenu specifically stated in this representation dated 6.8.2007 addressed to the Government as well as the Advisory Board that he was arrested on 23.6.2007 at 4 hours, but the said point was not considered either by the Government or by the Advisory Board while disposing of his representation and therefore, the detention order is vitiated.

5. We heard Mr.N.R.Elango, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

6. A perusal of the arrest memo and the first information report discloses that the detenu was arrested on 24.6.2007. But, the detenu made a representation on 6.8.2007, specifically alleging that he was arrested on 23.6.2007 at 4 hours. However, the said point was not considered either by the Government or by the Advisory Board while disposing the representation of the detenu. The non consideration of the above vital aspect, viz., the dispute as to the time of arrest of the detenu, vitiates the order of the detention.

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For the reason aforesaid, the impugned order of detention is vitiated and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 3.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1. The Secretary to Government
   State of Tamilnadu
   Prohibition and Excise Department
   Fort St.George, Chennai-9.

2. The Commissioner of Police
   Chennai Police.

3. The Public Prosecutor
   High Court, Madras.

4. The Joint Secretary to Government,
   Public (Law & Order) Dept.,
   Fort St. George,
   Chennai-9.

5. The Superintendent,
   Central prison,
   Puzhal, Chennai.

+ one cc to Mr. R. Balakrishnan, Advocate, SR.71720

ASM(CO)
RP 2.01.2008.

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